



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,895	05/18/2006	Larry R. Krepski	C1271.70048US01	8694
23628 7590 12/08/2009 WOLF GREENFIELD & SACKS, P.C. 600 ATLANTIC AVENUE BOSTON, MA 02210-2206			EXAMINER DESAI, RITA J	
			ART UNIT 1625	PAPER NUMBER
			MAIL DATE 12/08/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Art Unit: 1625

DETAILED ACTION

Claims 2-28, 32-73 were under examination.. New claims 79 and 80 have been added.

Claims 3, 5-13, 18, 32-40, 51-72, 75-78 are cancelled. Claims 29-31, 74 is withdrawn.

Claims pending 2, 4, 14-28, 41-49, 73, 79 and 80 are pending.

Response to arguments:-

The rejection under 35 USC 112 still stands. Applicants have amended the claims to a certain extend however it does not overcome the rejection. The claim still contains numerous variables and substitution. X' , R3 and R4 .

R₃ is selected from the group consisting of:

- Z'-R₄,
- Z'-X'-R₄,
- Z'-X'-Y'-R₄, and
- Z'-X'-R₄;

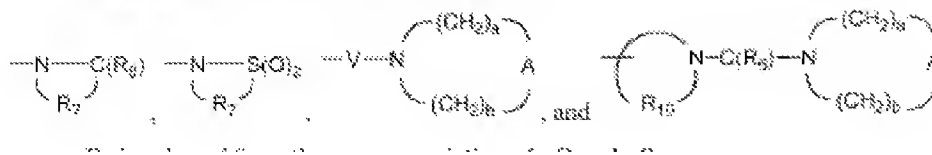
X' is selected from the group consisting of alkylene, alkenylene, alkynylene, arylene, heteroarylene, and heterocyclylene, wherein the alkylene, alkenylene, and alkynylene groups can be optionally interrupted or terminated by arylene, heteroarylene or heterocyclylene and optionally interrupted by one or more -O- groups;

Y' is selected from the group consisting of:

- O-
- Si(O)_m-
- S(O)_t-N(R₆)_r-
- C(R₆)-
- C(R₆)-O-

Art Unit: 1625

R_5 is selected from the group consisting of:



and also R_8

is a heteroaryl and all other large substituents..

The amendment does not overcome the rejection.

The rejection under 35 USC 102 over Crooks et al has been withdrawn as applicant have amended the claims.

The rejection of the claims under 35 USC 103 over Crooks et al US 6,573,273 and US 6,656,938 still stands. In view of the large scope of the prior art and the fact that there is no showing of unexpected results, applicants claims still remain obvious over the art.

A very similar core with very similar substituents is shown.. In view of the various substituents that the prior art shows, a small modification would be obvious to a person of skill in the art with the expectation that the pharmaceutical properties would be retained.

The applicant have been non-responsive regarding the Double Patenting rejections..

The rejection is repeated here.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined

Art Unit: 1625

application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 2, 4, 14-28, 41-49, 73, 79 and 80 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 12/092625, claim 1 of 11/885006, claim 1 of 11/885005, 11/595790 (positional isomers), 11/570716 (claim 3), 10/595065, 10/595792. Although the conflicting claims are not identical, they are not patentably distinct from each other because they have a similar core with the same oxime substituent and they are also drawn to the same use. The current application is devoid of a showing of any unexpected results.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Claims 2, 4, 14-28, 41-49, 73, 79 and 80 stand rejected..

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rita J. Desai whose telephone number is 571-272-0684. The examiner can normally be reached on Monday - Friday, flex time..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/595,895

Page 7

Art Unit: 1625

/Rita J. Desai/

Primary Examiner, Art Unit 1625

December 5, 2009.